

SUBMISSION NO. 19

From: Susan Harris [gingerthechicken@hotmail.com]
Sent: Wednesday 31 July 2002 5:18 PM
Subject: Private Submission - Timor Sea Treaty
31 July 2002

The Secretary
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600
AUSTRALIA
jsct@aph.gov.au

Dear Secretary

Re. Inquiry into the Timor Sea Treaty (May 2002) and the Exchange of Notes between East Timor and Australia (Timor Sea) (May 2002)

Thank you for the opportunity to comment on your Committee's review of these two important agreements.

I object to the timing and content of the Australian decision taken on 26 March 2002 to withdraw from international arbitration which may effect the lawful resolution of this dispute between East Timor and Australia. It should be placed in the context of Australia's increasing withdrawal from multilateral systems which effect international law and human rights, such as the UN treaty body reform process and the decision not to ratify the Optional Protocols to CEDAW and CAT.

The announcement came after a legal seminar in Dili. The Dili seminar heard advice from two international law experts, Professor Vaughan Lowe of Oxford University and the Sydney barrister Christopher Ward, that current maritime law would swing the lateral boundaries of East Timor's offshore zone to the east and west, giving it at least 80 per cent of the Greater Sunrise fields and potentially 100 per cent - as opposed to the 20 per cent under present boundaries.

The Attorney-General, Daryl Williams, and the Foreign Minister, Alexander Downer, immediately announced that Australia would henceforth exclude maritime boundaries from compulsory dispute settlements in the International Court of Justice and the International Tribunal for the Law of the Sea. The Ministers said "Australia's strong view is that any maritime boundary dispute is best settled by negotiation rather than litigation".

The financial issues involved are substantial. A leading oil and gas engineer, Geoffrey McKee, was reported in the Sydney Morning Herald as saying that over the economic life of Greater Sunrise - 2009 to 2050 - such changed boundaries would give East Timor up to \$US36 billion (\$68 billion) more in government revenue than the \$US8 billion it can now expect. Australia's share would shrink from \$US28 billion to nothing. East Timor could expect to add almost \$US4 billion more from the small Laminaria/Corallina oil fields on the western side of the joint zone, and from the Bayu-Undan field inside the zone. The amounts involved dwarf Australia's aid contributions.

I believe that current international law mechanisms (UN Convention on the Law of the Sea) are the appropriate way to determine the correct boundary between Australia and East Timor and that Australia should abide by the umpire's decision. Our insistence on a bilateral negotiation which may take up to 30 years may coincide with the life of the oil and gas fields.

I believe this action has in itself damaged the work done by the Australian government, NGOs and individuals to assist in the recovery and reconstruction of the Democratic Republic of East Timor since the destruction of September 1999. I attach a letter from East Timorese NGOs to their government on this issue, and recommend to the Committee that the voice of Timorese civil society be taken into account on this issue. (see Annex A)

In my submission, therefore, the Committee should press the Australian Government:

- 1.. to resolve the outstanding seabed boundary disputes AND the related resource sharing dispute between Australian and East Timor
- 2.. to do this according to international law, and with the assistance of international arbitration, if agreement cannot easily be reached
- 3.. to do this in a timely manner, so that the people of East Timor are not wrongly deprived of resources in particular from the rich oil and gas fields of Greater Sunrise, to the northeast of the Joint Petroleum Development Area, but also the oil and gas fields to the southwest.

Yours sincerely,

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Annex A

The following is an English translation of a letter sent from East Timorese civil society leaders to all Members of Parliament on 13 June 2002. The original is in Bahasa Indonesia. The maps of the Timor Sea treaty boundaries from La'o Hamutuk Bulletin Vol 3, No. 4 were appended to the letter.

NATIONAL NGO FORUM TIMOR LOROSA'E NGO Coalition for Timor Gap Monitoring

Revenues from oil and natural gas currently represent East Timor's greatest hope for meeting the East Timorese people's basic needs including economic development, health, and education.

Elected members of the National Parliament of the Democratic Republic of East Timor (RDTL) are representatives of the people of East Timor and make up the national decision making body. At this time, you are about to make a very crucial decision about exploration and exploitation of oil and natural gas wealth in the Timor Sea.

The reason for this is that while East Timor's independence was recognized internationally on 20 May 2002, this country does not yet have maritime boundaries that are based in legal principles found in the UN Convention on the Laws of the Sea (UNCLOS). The maritime boundary between Australia and East Timor and the status of ownership of oil and natural gas wealth are now a national and international problem for debate.

Without giving a legal and rational clarification about resolving the maritime boundaries and the status of ownership of natural resources in the Timor Sea, on 20 May 2002 several hours after the UN officially passed powers to the East Timorese people, East Timorese Prime Minister, Mari Alkatiri, and Australian Prime Minister John Howard signed the Timor Sea Agreement to continue exploration and exploitation of oil and natural gas in the Timor Sea. The 20 May 2002 Treaty follows the Exchange of Notes from February 2000 and the Draft Agreement of July 2001 between UNTAET and Australia.

Apart from the agreement between the two countries, some international experts have advised Parliament members that based on 1982 UNCLOS principles, resources north of the median line in the Timor Sea, including most of the oil and natural gas in this region, belong to East Timor. Based on this law of the sea, experts appeal to Parliament members and the government to not sign and ratify the Treaty with Australia. They also appeal the people of East Timor to bring this problem to international court.

Aside from expert legal opinions on the sea noted above, independent and sovereign East Timor must follow two legal paths: East Timor's constitution which was written by the East Timorese themselves and UNCLOS from 1982.

To understand and implement national and international legal principles, we refer here to various articles in our own Constitution as well as in UNCLOS.

RDTL Constitution

1. Section 4 about the Territory of the Democratic Republic of East Timor states, "East Timor comprises the land surface, the maritime zone and the air space", "The extent and limits of territorial waters and the exclusive economic zone (EEZ), and the rights of East Timor to the adjacent seabed and continental shelf shall be laid down in the law," and "The State shall not alienate any part of the East Timorese territory or the rights of sovereignty over the land, without prejudice to rectification of borders."

The above section explains that East Timor has full power to decide first its land, air and maritime boundaries, following international principles including claiming the 200 mile EEZ. This section also points to the fact that East Timor can not simply let go of its territorial waters and the wealth therein to Australia without giving evidence in accord with International Law of the Sea paths and instruments.

2. Section 139 about Natural Resources states:

1. The resources of the soil, the subsoil, the territorial waters, the continental shelf and the exclusive economic zone, which are essential to the economy, shall be owned by the State and shall be used in a fair and equitable manner in accordance with national interests.

2. Conditions for the exploitation of the natural resources referred to in item 1 above should lend themselves to the establishment of mandatory financial reserves, in accordance with the law.

3. Exploitation of the natural resources shall preserve the ecological balance and prevent destruction of ecosystems. This means that the oil, gas and other natural resources in the Timor Sea must be exploited and utilized in the most fair, legal and sustainable manner possible for the prosperity of the East Timorese people.

Referring to the above, we judge that the Timor Sea Agreement does not conform with the mandates in East Timor's Constitution, resulting in it not giving a fair outcome to the East Timorese people. For

example, there are oil and natural gas fields within the Timor Gap and the region of joint exploration as well as outside of these areas, such as the Greater Sunrise fields and Laminaria/Corallina which should belong to East Timor but are currently held by Australia. And we are certain that this represents the result of the illegal 1989 agreement between Australia and Indonesia, when East Timor was under Indonesian occupation.

3. Section 50 about the Right to Work. Paragraph 1 states, "Every citizen, regardless of gender, has the right and the duty to work and to choose freely his or her profession." The meaning of this Section is that a nation must create conditions that will guarantee that each citizen of the country can obtain work for a proper livelihood. Based on the 20 May 2002 Treaty, it is very difficult for East Timor to guarantee work opportunities for East Timorese because exploitation of this oil and natural gas wealth will be done by Australia. What becomes a problem for East Timor is how to deal with the high unemployment rate which has exceeded tens of thousands, economic development and other things.

UN Convention on the Law of the Sea

UNCLOS also clearly addresses the question of maritime boundaries between two countries: 1. Section 56 Paragraph 1 states, "Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters superjacent to the seabed and of the seabed and its subsoil" In other words, each country has exclusive rights to exploit both the resources located in the water as well as those located on their seabed.

If East Timor receives its proper entitlements to its resources, it should receive revenues of many tens of billions of dollars over the next decades. However under the Timor Sea Treaty that has been signed, East Timor may receive only the portion of its resources which are in 'Zone A' or 'Joint Petroleum Development Area' (JPDA), which is a much smaller area than East Timor's potential boundary entitlements.

Oil and gas fields including Greater Sunrise (located east of the JPDA) and Laminaria/Corralina (located west of the JPDA) should belong to East Timor, but instead, under this Treaty, most of these resources have been given to Australia, which means East Timor giving millions of dollars to Australia.

Article 22 of the 20 May 2002 Timor Sea Treaty states "This treaty shall be in force until there is a permanent seabed delimitation between Australia and East Timor or for 30 years from the date of its entry into force, whichever is sooner".

Australia has stated that it will resist East Timor's efforts to determine its maritime boundaries with East Timor, preferring to continue the lines drawn by the illegal 1989 Timor Gap Treaty with Indonesia.

Australia has shown this by withdrawing from the jurisdiction of the International Court/ICJ over maritime boundary issues which it did, in March this year. Australian Foreign Minister Alexander Downer has recently confirmed that Australia will not negotiate its seabed boundaries with East Timor. This proves that Australia's position is to resist any legal determination of its maritime boundaries with East Timor.

Therefore if Australia succeeds in obstructing a seabed boundary determination with East Timor, the wording of the Timor Sea Treaty indicates that this Treaty (if ratified by East Timor's Parliament) would stay in effect for 30 years until all the oil and gas is used up and the money has been taken by Australia.

A number of International legal experts have noted that East Timor should try to receive its full entitlements by applying to the International Court of Justice to have its entitlements determined in accordance with international law under the principles of the United Nations Convention on the Law of the Sea (UNCLOS). If not done this way, East Timor's bargaining position may be seriously weakened.

Even though Australia has attempted to withdraw from the jurisdiction of the International Court, legal advice has been received that the withdrawal only becomes effective three months after notification. That means that if the East Timorese government acts quickly it may still be able to hold Australia to its international obligations to accept seabed boundaries as determined under the international convention.

With a good awareness of the Timor Sea issue and East Timorese national and international legal norms, we take this opportunity to make the following recommendations that the East Timorese parliament:

1. Not ratify the Timor Sea Treaty in its current form. Parliament should inform the Australian government of East Timor's desire to settle the maritime boundary issue as part of renegotiating the treaty.

2. Immediately urge the Government of RDTL to take the steps necessary to bring the boundary issue before the International Court of Justice for legal determination under UNCLOS principles. If East Timor acts quickly, it may be possible to achieve ICJ jurisdiction before Australia's withdrawal takes effect.

These steps could include:

a. Accede to the UN Convention on the Law of the Sea/UNCLOS and apply for jurisdiction of the International Court of Justice (ICJ);

b. Take steps to protect East Timor's national sovereignty and resources by making a claim of these issues to the International Court of Justice and in accordance with the international principles of UNCLOS.

c. Immediately take steps to obtain jurisdiction of the International Court of Justice (the ICJ) and claim East Timor's full entitlements under UNCLOS.

d. Form a multisectoral, multidisciplinary negotiating team to guarantee transparency, accountability in the continuation of the negotiating process.

3. Ask all national Parliament members to use their right to interpellation to understand issues relating to the Timor Sea, including the questions of boundaries, environmental impacts of different approaches, and East Timorese participation in employment, training, and other aspects of the project. Hold public hearings into these matters and participate in open public discussion on these matters of national interest.

Dili, 12 June 2002

(signed)

1. Cicilio Caminha Freitas

Executive Director NGO Forum

2. Dr. Lucas da Costa

Director, CJEPTIL

3. Adriano do Nascimento

Coordinator, La'o Hamutuk / The East Timor Institute for Reconstruction Monitoring and Analysis

4. Demetrio do Amaral de Carvalho

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5. Manuela Perreira

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6. Estanislau Saldanha, MTech

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7. Mario de Araujo

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8. Jose Conceição da Costa

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9. Domingos Baptista de Araujo

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10. Julino Ximenes da Silva

Policy Analysis Division, Yayasan HAK (Human Rights Foundation)

11. Francisco F. Belo

Administrative Coordinator, RENETIL (National East Timorese Students Resistance)

12. Luciano da Silva

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Cc: President, Prime Minister, Bishops, political parties and media

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